

# **BOARD OF CODE STANDARDS AND APPEALS MINUTES**

**June 1, 2009**

**Members:** Francisco Banuelos, Randy Coonrod, Randy Harder, Richard Hartwell, Bernie Hentzen, Ed Murabito, Warren Willenberg, John Youle

**Present:** Coonrod, Harder, Hartwell, Hentzen, Willenberg, Youle

**Staff Members Present:** Kurt Schroeder, Deb Legge, Penny Bohannon, Richard Brown, Darlene Hultman, Elaine Hammons (Central Inspection); Jeff VanZandt (Law Department)

The regular meeting of the Board of Code Standards and Appeals was called to order by Vice Chairman Youle on Monday, June 1, 2009, at 1:31 p.m. in the 1st floor Board Room, City Hall, 455 N. Main, Wichita, Kansas.

## **1. Approval of the May 4, 2009, minutes.**

Board Member Harder made a motion to approve the May 4, 2009, minutes as submitted. Board Member Hartwell seconded the motion. The motion passed.

## **2. Approval of the June 2009 license examination applications.**

There were no license examination applications for the month of June.

Vice Chairman Youle requested that the Board and City staff introduce themselves to the citizens in attendance.

## **3. Review of the Class C Contractor's License of Mike Utterback d/b/a Cobblestone Builders, Inc.**

Mr. Mike Utterback was accompanied by his attorney, Kent Collins.

Mr. Schroeder gave a brief introduction of the complaints against Mike Utterback d/b/a Cobblestone Builders, Inc. He explained that Title 18.12 of the Code of the City of Wichita authorizes the Board of Code Standards and Appeals to hear matters pertaining to the suspension or revocation of contractor licenses and take appropriate action.

Mr. VanZandt began the hearing by apprising the Board of the first complaint to be heard. He referred to Section 18.140(h) – The Fraudulent Use of License to Obtain Building Permits for Another, as the section in which Mr. Utterback was in violation.

Mr. Collins raised an objection to the hearing insisting that its litigation and resolution in Environmental Court made the complaint hearing unnecessary and consideration of the matter would be placing his client in double jeopardy and would, therefore, be a violation of Mr. Utterback's Constitutional Rights. Mr. VanZandt acknowledged Mr. Collins' objection and reminded him that the hearing was not a formal evidentiary hearing. Mr. VanZandt noted that it was a license suspension/revocation hearing, and under Section 18.12.150, which states that in the event that the hearing is based upon a violation of a code provision, the previous Environmental court matter was necessary in order to show that there was a violation to bring forth the hearing; however, Mr. Collins' objection would be duly noted for the record if an appeal should be filed.

## **9127 W. Shade – Mr. and Mrs. Todd Drew**

Mr. and Mrs. Drew were accompanied by their attorney, Charles Curran.

Mr. VanZandt asked Mr. Drew to give a brief description of the event(s) that led him to initiate a complaint against Mr. Utterback d/b/a Cobblestone Builders, Inc. Mr. Drew verified that he had contracted with Ismael Salas d/b/a Salas Construction to pour a driveway slab and to replace a crawlspace with a basement under an existing structure. Mr. Drew said that he had no knowledge that Cobblestone Builders, Inc., was involved with the construction on his home until contacting Central Inspection, at which time he learned that a permit was obtained by Cobblestone Builders, Inc. Upon learning of the permit, Mr. Drew contacted Mike Utterback and inquired how the matter concerning the incomplete construction would be resolved. Mr. Drew said that Mr. Utterback did not give a definitive answer as to whether Mr. Salas was an employee of Mr. Utterback. The family vacated the structure on November 1, 2008, and has been unable to occupy the residence at 9127 W. Shade due to the exposed water lines, exposed gas lines, and mold that is present in the house. Questioned by Mr. VanZandt about the amount of money that Mr. Drew had paid toward the contracted work, Mr. Drew said he had paid approximately \$23,000.

Mr. Collins inquired whether Mr. Drew had a contract with Mr. Utterback d/b/a Cobblestone Builders, Inc. Mr. Drew replied that he could not honestly say whether he had a contract with Mr. Utterback or his company because the only signatures on the contract were his own and that of Ismael Salas; Mr. Drew added that the contract did not indicate who the contracting company might be. Mr. Collins asked whether anyone represented themselves as Mr. Utterback or as a representative of Cobblestone Builders, Inc. Mr. Drew responded that there had been no mention of Mr. Utterback or Cobblestone Builders, Inc., based on the fact that the question was never asked. Referring to the alleged phone conversation with Mr. Utterback, Mr. Collins asked how Mr. Drew could be certain he had actually been talking with Mr. Utterback, contending that anyone could represent themselves on the phone as another person. Mr. Drew agreed that a person could represent themselves as anyone, but reiterated that the person on the phone had announced himself as Mike Utterback with Cobblestone Builders, Inc..

Addressing Mr. Richard Brown, Building Inspector with Central Inspection, City of Wichita, Mr. VanZandt asked him if he had had reason to investigate a complaint regarding the remodel at 9127 W. Shade, and what had resulted from that investigation. Mr. Brown said that he had issued a citation to Mr. Utterback d/b/a Cobblestone Builders, Inc., for the fraudulent use of a contractor's license to obtain permits for someone other than the contractor to whom the license had been issued. Mr. Utterback had pled "no contest" to the charge in Environmental Court and was found guilty by the court. Mr. Brown said he had been at the property on Shade shortly after the complaint was filed by Mr. Drew, and then again after the conclusion of the court case involving Mr. Utterback. Upon his investigation of the complaint, Mr. Brown discovered that a permit had been obtained by Mike Utterback d/b/a Cobblestone Builders, Inc.; however the actual work was being performed by Mr. Salas, an unlicensed contractor.

In response to Mr. Collins' inquiry, Mr. Brown said the permit was issued on November 1, 2007. Mr. Collins then asked when the contract for the work had been signed. Mr. Brown said the contract was dated September 7, 2007. Mr. Collins noted that the date of issue for the permit was approximately two months after the date shown on the contract.

Mr. VanZandt asked Mr. Brown if he had checked the current records on Mr. Utterback's permits. Mr. Brown said that sixty-eight of ninety-four permits issued since 1992 had not been called for inspection. Mr. Collins requested that his objection on relevance be noted for the record. He told the Board that his client, Mr. Utterback, wanted to make a statement to the Board.

Directing his remarks to the Board, Mr. Utterback explained that he had taken out the permit for 9127 W. Shade to help a friend. Mr. Utterback said he received no compensation for his action. He said he also made sure all of the required inspections were performed, and upon Mr. Drew's call about the unfinished work, told Mr. Salas that he (Salas) needed to "get that straightened out." It was his understanding, Mr. Utterback stated, that the City of Wichita would not allow Mr. Salas to complete the work and abate the water issues on the site because he (Salas) was unlicensed. Mr. Utterback reiterated that he had received no compensation for the job and had had no other connection with the job other than obtaining a permit on Mr. Salas' behalf.

#### **721 S. Lorraine – Mr. Donald Clevenger**

Mr. VanZandt questioned Mr. Brown about the property at 721 S. Lorraine. Mr. Brown confirmed that he had received the documentation from Mr. Clevenger as presented by Mr. VanZandt. Mr. Brown said that he had only had a telephone conversation with Mr. Clevenger and had not been on site at 721 S. Lorraine.

Mr. Collins asked if Mr. Clevenger had provided any proof that he had paid \$36,000 up front as he alleged. Mr. Brown said that the only documentation provided by Mr. Clevenger had been presented by Mr. VanZandt. Since no permit had been issued, Mr. Brown confirmed that he had not made a site visit in response to Mr. Clevenger's complaint. It was Mr. Collins' contention that Mr. Clevenger may have exaggerated the amount of money paid to Mr. Utterback. Mr. Collins reported that Mr. Utterback spent \$28,261 of the \$36,000 he received on construction materials and labor. Mr. Utterback stated that Mr. Clevenger sent him a letter terminating their contract. He confirmed that he had received \$36,000 from Mr. Clevenger, but said that the only work done was interior work that did not require a permit. No work was done on the pole barn. Mr. VanZandt asked Mr. Utterback if he had the receipts for the construction materials and labor. Mr. Utterback replied that he did not bring the receipts with him.

#### **2324 E. Shadybrook – Ms. Kimberly Penn**

Showing Ms. Penn several documents, Mr. VanZandt asked her if they were the documents that she had provided to Mr. Brown as part of her complaint against Mr. Utterback d/b/a Cobblestone Builders, Inc. Ms. Penn confirmed that they were the copies that she had provided. Ms. Penn said the documents included two contracts, one signed on April 18, 2008, and a second one signed on April 19, 2008.

Ms. Penn said she received a check for \$18,669.30 from her insurance company. She then tendered that amount to Mr. Utterback as the down payment for the work specified by the contracts. No work was performed by Mr. Utterback d/b/a Cobblestone Builders, Inc., in April 2008. In May 2008 a dumpster was placed on her property, and five men arrived on the first day that work was performed. After the first day that work was performed, only one man arrived to continue the job, taking two weeks to gut the interior of the house. Ms. Penn said she contacted Mr. Utterback to tell him that the dumpster on her property was full, and Mr. Utterback had the dumpster hauled away and replaced it with another dumpster. Ms. Penn said she questioned other workmen who brought debris from other locations to put in the dumpster at her property. She said that she was told that Mr. Utterback had instructed his workmen from other job sites to put their debris in the dumpster located at Ms. Penn's address. Once the second dumpster had been filled, it was removed and a third dumpster was placed on Ms. Penn's property. At that time she said she contacted Central Inspection and filed a complaint that Mr. Utterback was charging her for the rental and dumping of dumpsters that were not being used to collect debris from her property. An inspector from Central Inspection contacted Mr. Utterback and informed him that he could not charge Ms. Penn for the last two of the three dumpsters and the disposal of their contents.

An electrician, hired by Mr. Utterback, installed electrical wiring. Ms. Penn said she tried calling the number she was given for the electrician, but the number had been disconnected. She then asked Mr. Utterback if he had obtained a permit for the work at her property. She said that he told her he had a permit and attached a paper on her front door. Ms. Penn contacted Central Inspection to verify that a permit had been issued, and was told that no permit had been issued to Cobblestone Builders, Inc., for the work on her property. Once the electrician called for inspection, the electrical wiring was turned down because it did not comply with the requirements for a house that had been damaged by fire. The electrical work was approved on the third inspection, and a framing inspection was requested. The framing did not pass inspection.

Ms. Penn said that the remodel/repair work halted for periods of thirty days or more. Ms. Penn said she reminded Mr. Utterback that she had to be out of the temporary accommodations by July. She said she repeatedly made calls to Mr. Utterback, and he assured her that he would send someone to complete the work. Her insurance company ultimately provided monies for living accommodations for six months, after which time Ms. Penn was forced to stay with friends. Ms. Penn said she discovered that the gutting of the interior of her house had not been completed, and debris had been left inside the house. After contacting an attorney, Ms. Penn was told by her lawyer that Mr. Utterback indicated that he had stopped working on her property because she had not paid him the additional \$5,000. The contract with her insurance company specified that Mr. Utterback receive half of the money at the beginning of the job and the other half upon completion of the job. Ms. Penn was reluctant to give any more money to Mr. Utterback because so little work had been done since the first payment to Mr. Utterback.

Responding to Ms. Penn's complaint to the Board, Mr. Utterback said that he met with Ms. Penn and her attorney to discuss the situation, and also met with Ms. Penn and a representative of her insurance company at the site. He said both the insurance representative and Ms. Penn's attorney indicated that he (Utterback) would have difficulty receiving the remaining monies for the job. Mr. Utterback said that he tried to call Ms. Penn and Ms. Penn's attorney,

but was unable to make contact. At that time, Mr. Utterback decided to send a letter to Central Inspection requesting cancellation of the permit, and then he filed a lien against Ms. Penn's property.

Mr. VanZandt reviewed the code sections for the Board, clarifying which sections Mr. Utterback had allegedly violated:

**9127 W. Shade** – Section 18.12.140(h) - Fraudulent use of license to obtain building permits for another;

**2324 E. Shadybrook** – Section 18.12.140(a) – Abandonment of any contract without legal causes; and Section 18.12.140(b) - Diversion of funds or property received for performance or completion of a specific contract, or for a specified purpose in the performance or completion of any contract, and their application or use for any other contract, obligation or purpose, or the failure, neglect or refusal to use such funds or property for the performance or completion of such contract;

**721 N. Lorraine** – Section 18.12.140(b) - Diversion of funds or property received for performance or completion of a specific contract, or for a specified purpose in the performance or completion of any contract, and their application or use for any other contract, obligation or purpose, or the failure, neglect or refusal to use such funds or property for the performance or completion of such contract; and Section 18.12.140(j) - (j) Failure to obtain permits as required in Section 18.08.020.

Pursuant to Section 18.12.150, Mr. VanZandt explained to the Board that it had the option of finding that no violations occurred; suspend the license for a specified period of time; or revoke the license.

Speaking on Mr. Utterback's behalf, Mr. Collins told the Board that his client had already been to court regarding the permit obtained for Ismael Salas under Mr. Utterback's license. Mr. Collins stated that the matter was resolved at that time. In the instance of the complaint by Mr. Clevenger, Mr. Collins asserted that there had been no diversion of funds because Mr. Utterback was entitled to keep a portion of the funds as payment for his work. In the case of Ms. Penn, Mr. Collins said that his client did not abandon the contract without due cause, but that it was Ms. Penn who was in breach of contract for not paying Mr. Utterback in accordance with their contract.

Vice Chairman Youle asked if Mr. Utterback's contractor's license was active and current. Mr. VanZandt affirmed that the license was active and current. Board Member Coonrod inquired whether Mr. Utterback had any open permits. Mr. VanZandt said that the records indicated Mr. Utterback d/b/a Cobblestone Builders, Inc., had sixty-four open permits.

Board Member Coonrod made a motion to suspend Mr. Utterback's Class C Contractor's License for a period of one year, based on his violation of Section 18.12.140(h) - Fraudulent use of license to obtain building permits for another. In the interim, Mr. Utterback would be required to complete the open permits and then reappear before the Board with an update of the status of those jobs. Board Member Harder seconded the motion. The motion carried.

#### **4. Condemnation Hearings**

##### **Review Cases:**

##### **1. 1132 N. Cleveland**

This property was removed from the agenda. Repairs have been completed.

##### **2. 2048 N. Minneapolis**

There was no one present on behalf of this property.

About 24 x 32 feet in size, this one-story frame dwelling has been vacant for at least two years. This structure has cracked asbestos siding shingles, with missing shingles; composition roof, with missing shingles; deteriorating rear porch, with cracked concrete; and the soffit, fascia and wood trim are deteriorated.

The taxes are current; however, there is a 2008 assessment for front street paving in the amount of \$106.07, and there is a 2009 assessment for weed mowing in the amount of \$225.08, including interest. There is a trailer on site filled with bags of trash, tree waste, and debris. There are forms that have been set on the rear porch to replace the porch, and painting has been done.

At the March 2, 2009, Mr. Harold Lugrand and Ms. Shirley Lugrand were present, and the Board approved a motion to allow ninety days for the exterior of the property to be brought into minimum code compliance, maintaining the property in a clean and secure condition in the interim, or they were to reappear before the Board. OCI staff received a call from Mr. and Ms. Lugrand earlier in the day advising staff that the Lugrands were unable to attend the hearing that day due to family issues that took them out of state. The Lugrands requested an extension on time to complete the repairs.

Board Member Coonrod made a motion to allow thirty days for the completion of the exterior repairs or the property would be referred to the City Council with a recommendation of condemnation, with ten days to begin demolition and ten days to complete removal of the structure. Board Member Harder seconded the motion. The motion was approved.

#### **New Cases:**

##### **1. 1324 N. Madison**

The property owner, Edmund Brown, was present.

This one-story frame dwelling is about 24 x 22 feet in size. Vacant and open, this structure has a shifting and cracking concrete block foundation; missing and rotted wood lap siding; dilapidated front and rear porches; and rotted wood trim and framing members.

The active file was initiated on this property on May 23, 2008. A Notice of Improvements was issued, as well as a Notice of Violation. There is an open Neighborhood Nuisance Enforcement case, which was started on May 21, 2009, because of the premise conditions. A Pre-condemnation Letter was issued on January 9, 2009. The 2008 taxes are delinquent in the amount of \$165.13; there are no special assessments against the property. There is bulky waste, scattered debris, and tall grass and weeds on the property. Formal condemnation action was initiated on April 16, 2009. The west side wall has been removed and covered with sheet metal. No repairs have been made to the structure; however, it is secure.

Mr. Brown told the Board that all repairs had been made except for the repairs to the back porch. He anticipated that the back porch repairs would be completed by the end of the week.

Board Member Harder made a motion to return the property to regular code enforcement. Board Member Coonrod seconded the motion. The motion was approved.

##### **2. 2031 E. 16<sup>th</sup> N.**

There was no representative for this property present at the hearing.

This two-story frame dwelling, approximately 89 x 36 feet in size, is vacant and open. The structure has damaged and missing asphalt siding shingles; deteriorated metal siding; badly worn composition roof, with missing shingles; and the front porches have exposed structural members.

Board Member Coonrod made a motion to submit the property to the City Council with a recommendation of condemnation, with ten days to start the wrecking of the structure and ten days to complete the demolition. Board Member Willenburg seconded the motion. The motion carried.

##### **3. 1648 N. Piatt**

There was no one in attendance to represent this property

A one-story frame dwelling about 92 x 27 feet in size, this structure has been vacant for at least three years. This structure has brick cracking and shifting veneer siding; deteriorated loose soffits; rotted wood trim; and cracked concrete front and rear porches.

Board Member Harder made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to initiate removal and ten days to complete demolition. Board Member Willenberg seconded the motion. The motion passed unanimously.

#### **4. 1608 N. Volutsia**

Timothy Timmons and Clyde Williams, relatives of the deceased owners, were present as representatives of this property.

A one-story frame dwelling approximately 38 x 23 feet in size, this structure is vacant and open. This structure has missing and rotted wood siding; deteriorated composition roof, with missing shingles; sinking concrete rear porch slab; and rotted wood trim and framing members.

An active case was started on this property on February 8, 2006. In February of 2006, OCI staff was informed that the owners were deceased. In July 2008, OCI had contact with individuals who identified themselves as the owners' grandson and granddaughter, who indicated that they were interested in repairing the property. The taxes are current, and there are no special assessments against the property. There is bulky waste, tree waste, wood debris, and miscellaneous debris on the premise. No repairs have been made; the front and rear doors are not secure, and there are some broken windows.

Mr. Timmons apprised the Board of the work that had been done since that last OCI staff site visit. Mr. Timmins said that the interior has been cleaned of trash and debris. The grass has been mowed, the trees have been trimmed, and an individual had been contracted to remove the rest of the debris. He intended to hire a licensed contractor to replace the windows, doors and siding.

Board Member Hartwell made a motion to allow thirty days for the exterior repairs to be completed, maintaining the site in a clean and secure condition in the interim, or reappear before the Board with an update on the status of the property. Board Member Hentzen seconded the motion. The motion passed without opposition.

#### **5. 647 S. Sylvan**

There was no representative present.

Approximately 38 x 24 feet in size, this one-story frame dwelling is vacant and open. The structure has a shifting and cracking concrete foundation; missing asbestos siding; fire damaged front porch and east wall; and the interior has been gutted by fire.

Board Member Hentzen made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to start wrecking the structure and ten days to finish razing it. Board Member Willenberg seconded the motion. The motion was approved.

The Board adjourned for an Executive Session at approximately 2:40 p.m. to consult with Mr. VanZandt, attorney.

The Board reconvened at 2:57 p.m.

With no other business to conduct, Board Member Hartwell made a motion to adjourn the meeting. Board Member Coonrod seconded the motion. The motion carried.

The meeting adjourned at 2:58 p.m.